

Award No. 2087
Docket No. 1975
2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Electrician A. W. Kriser was discharged from the service of The Pullman Company in violation of the controlling agreement, effective June 9, 1955.
2. That accordingly the Carrier be ordered to reinstate him with seniority unimpaired.
3. That accordingly the Carrier be ordered to compensate him for all the wage loss suffered by him.
4. That accordingly the Carrier be ordered to clear his record of this charge.

EMPLOYEES' STATEMENT OF FACTS: Electrician A. W. Kriser, hereinafter referred to as the claimant, was employed by The Pullman Company on September 10, 1951 at the Philadelphia District and has been in their service ever since.

Under date of March 14, 1955, the claimant was notified to appear for a hearing at 3:00 P. M. March 18, 1955. This hearing date was postponed until May 9, 1955. A copy of said notification and postponements appear in the hearing record, Pages 1, 2, 3 and 4, which is hereby submitted and identified as Exhibit A.

Under date of June 8, 1955, A. Smith, foreman, Philadelphia District, notified the claimant that he was dismissed from the service of The Pullman Company. A copy of this notification is hereby submitted and identified as Exhibit B.

Under date of June 16, 1955, we appealed this decision of Foreman A. Smith to Mr. W. W. Dodds, appeals officer, The Pullman Company, advising

that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (See also Second Division Awards 993, 1041, 1109, 1157, 1253 and Fourth Division Award 257).

Also, in Third Division Award 2769, Docket No. PM-2677, the Board stated, under **OPINION OF BOARD**, as follows:

"* * * In its consideration of claims involving discipline, this Division of the National Railroad Adjustment Board (1) where there is positive evidence of probative force will not weigh such evidence or resolve conflicts therein, (2) when there is real substantial evidence to sustain charges the findings based thereon will not be disturbed; (3) if the Carrier has not acted arbitrarily, without just cause, or in bad faith its action will not be set aside; and (4) unless prejudice or bias is disclosed by facts or circumstances of record it will not substitute its judgment for that of the Carrier." (See also Third Division Awards 419, 431, 1022, 2297, 2632, 3112, 3125, 3149, 3235, 3984, 3985, 3986, 5011, 5032, 5881 and 5974).

The company submits that the facts of record clearly establish the charge against Kriser and provide full support for the measure of discipline imposed upon him. The organization's claim is without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to this dispute were given due notice of hearing thereon.

In the instant case the record reflects that sufficient evidence was adduced at the investigation to justify the carrier's conclusion as to the claimant's guilt.

We believe that the discipline assessed was not unduly harsh, due to the fact that claimant's past record shows that he had been given a warning in 1953 and one in 1954 for similar violations covered by this same Rule 58.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1956.